

IP 03-1337-C K/T Watson v Fernandez Racing, LLC  
Magistrate Tim A. Baker

Signed on 1/12/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

DAVID WATSON,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:03-cv-01337-TAB-JDT
	)	
FERNANDEZ RACING, LLC,	)	
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
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DAVID WATSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CAUSE NO. 1:03-cv-1337-TAB-JDT
	)	
FERNANDEZ RACING, LLC,	)	
	)	
Defendant.	)	

**ENTRY ON CROSS MOTIONS FOR SUMMARY JUDGMENT**

**I. Introduction.**

Defendant Fernandez Racing, LLC originally hired Plaintiff David Watson for the last three races of the 2002 racing season. In December of that year, Watson signed a two-year contract to provide engineering services to Fernandez Racing. However, by the fifth race of the 2003 season, the relationship between Watson and Adrian Fernandez (“Adrian”), Fernandez Racing’s majority owner, began to sputter. By the twelfth race, no amount of time in the pits could repair the relationship and get it back up to speed. As a result, on August 4, 2003, Fernandez Racing, prompted by sponsorship pressures, communicated to Watson its desire to part ways. Watson argues that this communication terminated him without cause, thereby breaching his employment contract. Fernandez Racing acknowledges its desire to cease relations with Watson, but contends that it did not breach the contract because it continued to pay Watson while negotiating a buyout of his contract. Fernandez Racing asserts that it terminated Watson pursuant to contract provisions only after Watson first breached the agreement, failed to remedy his breach, and provided engineering services to a competing team.

Both sides have moved for summary judgment. For the reasons more fully explained below, Watson's motion for partial summary judgment is denied, and Fernandez Racing's motion for summary judgment is granted.

## **II. Summary Judgment Standard.**

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). This standard does not change when parties file cross-motions for summary judgment. International Brotherhood of Electrical Workers, Local 176 v. Balmoral Racing Club, Inc., 293 F.3d 402, 404 (7<sup>th</sup> Cir. 2002). "When considering the plaintiffs' motion for summary judgment, the court must consider the evidence in the light reasonably most favorable to the defendants, and vice versa." Eaton v. Onan Corp., 117 F. Supp.2d 812, 818 (S.D. Ind. 2000). See also O'Regan v. Arbitration Forums, Inc., 246 F.3d 975, 983 (7<sup>th</sup> Cir. 2001) ("With cross-motions, our review of the record requires that we construe all inferences in favor of the party against whom the motion under consideration is made.") (citation omitted).

Because the purpose of summary judgment is to isolate and dispose of factually unsupported claims, the non-movant must respond to the motion with evidence setting forth specific facts showing that there is a genuine issue for trial. See Michael v. St. Joseph County, 259 F.3d 842, 845 (7<sup>th</sup> Cir. 2001). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." Abrams v. Walker, 307 F.3d

650, 653 (7<sup>th</sup> Cir. 2002), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). As there are no material facts in dispute, summary judgment is appropriate. See, e.g., Dempsey v. Atchison, Topeka and Santa Fe Ry. Co., 16 F.3d 832, 836 (7th Cir. 1994) (“[S]ummary judgment is appropriate – in fact, is mandated – where there are no disputed issues of material fact and the movant must prevail as a matter of law.”). Moreover, “[g]enerally, the construction of a written contract is a question of law for the trial court for which summary judgment is particularly appropriate.” Ten Cate Enbi, Inc. v. Metz, 802 N.E.2d 977, 981 (Ind. Ct. App. 2004).

### **III. Background<sup>1</sup>**

Fernandez Racing competes in races sanctioned by Championship Auto Racing Teams ("CART") and the Indy Racing League ("IRL"). [Compl. ¶¶ 4, 6; Answer ¶¶ 4,6]. In late 2002, Fernandez Racing hired Watson, an experienced racing engineer, to serve as the race engineer on Adrian's CART team for the final three races of the 2002 season. [Anderson Dep., pp. 13-14; Watson Dep., pp. 8-10, Def.'s Ex. 1]. Thereafter, on December 11, 2002, Watson entered into a written Engineering Employment Agreement (the "agreement" or "contract") with Fernandez Racing to provide engineering services to Fernandez Racing from December 1, 2002 through November 30, 2004. [Anderson Dep., p. 16; Compl., Ex. 1].

For the 2003 race season, Fernandez Racing moved one of its two cars from the CART series to the IRL series. [Anderson Dep., p. 20]. The rules concerning set up of race cars in CART and IRL races differed. Accordingly, Fernandez Racing employed separate teams of engineers, mechanics and crew members to work on its cars in the two series. [Id. at 17-20]. To

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<sup>1</sup>The facts are either undisputed or viewed in a light most favorable to the non-moving party. In addition, this background section is a brief overview of the facts and is not meant to be an exhaustive recitation of all material facts in this case.

accomplish this, Fernandez Racing moved those employees who had previously worked on driver Shinji Nakano's CART team to the newly formed IRL team. However, Fernandez Racing replaced Nakano with driver Roger Yasukawa. [Id.]. Adrian remained Fernandez Racing's CART series driver for the 2003 season. [Id. at 20].

Adrian became dissatisfied with Watson's performance as early as the fifth race of the 2003 season, held in Lausitz, Germany, when Watson's set-up of Adrian's car resulted in too much down force. [Fernandez Dep., p. 40, 52; Anderson Dep., pp. 52, 57; Watson Dep., p. 50]. As a result, Adrian placed fifteenth in the race. [Anderson Dep., Pl's Ex. 1]. Thereafter, Adrian's dissatisfaction with Watson grew after Vancouver, the eleventh race of the season, due to poor qualifying at the previous three races. [Anderson Dep., pp. 58-60, Pl.'s Ex. 1]. On the Monday following Vancouver's race, Adrian spoke with Tom Anderson, Fernandez Racing's Managing Director and minority owner, about removing Watson as his race engineer. [Anderson Dep., pp., 4-5, 59-60; Fernandez Dep., p. 23].

Tension mounted and, after the next race, on August 3, 2003 Adrian engaged Watson, Anderson and Gustavo Del Campo, Fernandez Racing's Team Manager, in a heated discussion regarding the team's performance. [Anderson Dep., pp. 32-33; Fernandez Dep., p. 60; Del Campo Dep., p. 9]. Adrian finished twelfth in the race and blamed his finish on incorrect car adjustments and a lengthy pit stop. [Fernandez Dep., pp. 58-60]. Nonetheless, Anderson believed Watson was putting 100% effort into his job. [Anderson Dep., p. 64].

On Monday, August 4, 2003, Adrian called Anderson and told him that, due to sponsorship pressures and poor results, he did not want Watson engineering his car anymore and that a change was needed immediately. [Fernandez Dep., pp. 62-63; Anderson Dep., pp. 36-37].

Later that same day, Anderson called Watson into his office and informed him that he was being relieved of his responsibility of race engineering Adrian's car due to lack of results. [Anderson Dep., pp. 73-74]. Anderson told Watson that Adrian did not want him on the team anymore. [Watson Dep., p. 75; Anderson Dep., pp. 73-74]. Watson understood "team" to mean all of Fernandez Racing, i.e. both the CART and IRL teams. [Watson Aff., ¶ 2]. Anderson also informed Watson that he and Adrian thought it was in the best interest of Watson and Fernandez Racing to make a settlement on the contract and part company. [Anderson Dep., p. 73]. Anderson told Watson that he was in a strong position because he had a contract and that they should meet for lunch the next day to "sort something out." [Watson Dep., p. 76]. Anderson added that Watson should not waste any time finding further work because they would come to a good settlement. [Watson Dep., p. 77].

In the same meeting, Anderson asked Watson to turn over certain Fernandez Racing property, including his long distance card, his key to the office and his software dongle.<sup>2</sup> [Watson Dep., p. 76; Anderson Dep., p. 76]. Anderson also closed Watson's access to On Ramp, the Internet provider that allows access to Fernandez Racing's in-house server. [Watson Dep., p. 76; Anderson Dep., p. 74]. Anderson allowed Watson to keep the cell phone Fernandez Racing had provided him until Watson returned home to England. [Watson Dep., p. 76].

On Monday afternoon, after meeting with Anderson, Watson spoke with Adrian via telephone. In that discussion, Watson protested the decision to remove him as Adrian's engineer. [Watson Dep., pp. 78-79]. However, Adrian reiterated that he did not want to work with Watson anymore, stating "I'm about to lose sponsors and probably the team and you're just

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<sup>2</sup>The dongle is a key that allows access to engineering software for race cars. [Anderson Dep., p. 76].

losing a job.” [Fernandez Dep., p. 63; Watson Dep., p.79]. In addition, on August 8, 2003, Fernandez Racing issued a press release stating that it had restructured its engineering department with the departure of Watson. [Anderson Dep., Pl.’s Ex. 5].

Over the course of the next few weeks, Watson and Anderson spoke on several occasions regarding the possible settlement of Watson’s contract with Fernandez Racing. [Watson Dep., pp. 81-82, 85-93, 95-97, Def.’s Exs. 2, 3; Anderson Dep., pp. 80-82]. However, those negotiations were unsuccessful. [Anderson Dep., pp. 89-90]. On August 28, Watson met with Anderson in Anderson’s office. In the meeting, Anderson informed Watson that since they had been unable to reach an agreement for termination of the contract, Watson needed to come back to work. [Id.; Watson Dep., p. 98]. Anderson asked Watson to return to work the following Tuesday, September 2, 2003, on a full-time basis, with his regular salary, and informed him that his first assignment would be to design new pit equipment for the 2004 season. [Anderson Dep., p. 90; Watson Dep., pp. 108-09, Def’s Ex. 8].

Watson did not return to work on September 2, 2003. [Watson Dep., pp.117-18]. On September 3, 2003, Anderson sent a letter to Watson by certified mail informing him that Fernandez Racing considered him to be still employed and that the agreement with Watson was still in effect. [Anderson Dep. p. 87, Pl.’s Ex. 4]. The letter stated that because the parties had been unable to reach an agreement regarding mutual termination of the contract, Watson was to commence a position with Fernandez Racing’s IRL engineering department starting September 2, 2003. [Id.]. Finally, the letter warned Watson that, if he was not taking paid vacation days and did not intend to return to work, the letter was notice, pursuant to Paragraph 5(B) of the agreement, that Watson was in material breach of the agreement and that his absence would

result in termination of the agreement if not cured within 30 days. [Id.]. Watson received Anderson's September 3<sup>rd</sup> letter on September 9, 2003. [Watson Dep., pp.116-17, Pl.'s Exs. 4, 8].

On the weekend of October 11-12, 2003, Watson provided engineering services to Dale Coyne Racing at the CART race in Mexico City. [Watson Dep., pp. 118-20; Anderson Dep., p. 85]. Watson did not seek permission from Fernandez Racing to work for Coyne because he believed he had been fired. [Watson Dep., p. 120]. Thereafter, on October 13, 2003, Anderson sent a certified letter to Watson informing him that his absence from work following the notice of breach in the September 3 letter, as well as Watson's performance of engineering services for Coyne at the CART Mexico City race, required termination of Watson's employment with Fernandez Racing. [Watson Dep., Def.'s Ex. 9]. Watson received the letter on October 16, 2003. [Watson Dep., p. 118, Def.'s Ex. 9].

Watson did not perform any services for Fernandez Racing after August 4, 2003. However, Fernandez Racing paid Watson his full salary and all other compensation (including prize money and expenses) according to the agreement through October 3, 2003. [Watson Dep., pp. 121-22, Def. Ex. 10].

#### **IV. Discussion.**

##### **A. Breach of Contract.**

The parties agree, and the contract provides, that Indiana law governs this dispute. [Compl., Ex. 1, ¶ 13]. In Indiana, "[t]he essential elements of a breach of contract action are the existence of a contract, the defendant's breach thereof, and damages." Berkel & Co. Contractors, Inc. v. Palm & Associates, Inc., 814 N.E.2d 649, 655 (Ind. Ct. App. 2004). As there



is no question that a valid contract exists, the Court turns to the plain language of the contract to determine whether Fernandez Racing transgressed its responsibilities to Watson under the contract. See id. at 657 (“Absent ambiguity, we will give the terms of a contract their plain and ordinary meaning.”). As noted above, both parties have filed for summary judgment. Watson seeks partial summary judgment contending: “(1) Fernandez Racing committed the first material breach of the agreement . . . when it terminated [Watson’s] employment without cause; and (2) that Mr. Watson is entitled to recover damages in an amount sufficient to provide him with the benefit of his bargain with Fernandez Racing.” [Docket No. 33, pp. 1-2]. Fernandez Racing seeks summary disposition arguing that it did not terminate Watson without cause as Watson claims, but only after Watson breached the agreement and failed to remedy his breach. For the reasons that follow, the Court agrees with Fernandez Racing.

First and foremost, there is no question that Fernandez Racing wanted out of the contract. Anderson made this fact clear on August 4, 2004 when he informed Watson that he was no longer wanted on the team. At that time, Anderson revoked Watson’s access to Fernandez Racing’s in-house server and collected Watson’s key, long distance card, and software dongle. In addition, Anderson instructed Watson not waste any time finding further work. Further, Adrian confirmed that he no longer wished to work with Watson, stating “I’m about to lose sponsors and probably the team and you’re just losing a job.” [Watson Dep., p. 79]. Finally, on August 8, 2003, Fernandez Racing issued a press release stating that it had restructured its engineering department with the departure of Watson. Yet despite Fernandez Racing’s clear intention to part ways with Watson, none of these facts reveal a material breach of the plain language of the contract.

According to the contract, Watson was to provide the following services during the term of the agreement:

(A) Services. Engineer shall be Team's engineer, shall provide all Engineering Services required or necessary in connection with any testing, practice, developmental programs or racing of Champ and/or IRL Cars during the term of this Agreement and shall report directly to Managing Director. Engineer shall consult with and render Engineering Services to and in conjunction with Team drivers, engineers, consultants or employees of Team and shall furnish written reports to Team regarding his Engineering Services such as set-ups, testing data and other Confidential Information when requested by Team and shall fully cooperate with all employees of Team in attempting to maximize the race track performance of Champ and/or IRL Cars owned and raced by Team or any affiliated entity.

(B) Manner of Performance. Engineer shall render Engineering Services at the headquarters of Team in Indianapolis, IN and be present at and attend, as requested by Team (i) Races and the testing, practice or qualifying sessions relating to the Races; (ii) testing and practice sessions in accordance with the directions of Team; and (iii) wind tunnel, tire shock absorber or other developmental testing or design sessions the purpose of which is to maximize the performance of the Champ Cars of Team or components thereof. Team will notify Engineer of the dates, times, and locations of any such sessions or events.

(C) Full Time. ...Engineer hereby accepts and agrees to perform the duties set forth in this Agreement, agrees to render the Engineering Services provided for herein and to devote his full time, attention and best efforts in performing the Engineering Services.

[Compl., Ex. 1, ¶ 1]. In return, Fernandez Racing agreed to provide to Watson certain compensation and benefits. [Id. at ¶ 3]. However, as Watson acknowledges, there is no dispute “that the parties tried to come to a mutual settlement of Watson’s claim under his contract, that Fernandez continued to pay Watson during the negotiation period and that the parties did not reach an agreement.” [Docket No. 41, p. 1] (emphasis added). Moreover, there is no allegation that Fernandez Racing shorted Watson or otherwise failed to provide him with the contracted-for compensation during the negotiation period. In other words, the question is not whether

Fernandez Racing failed to do something required under the contract. Fernandez Racing was obligated to pay Watson for his services and it did so. See Unger v. FFW Corp., 771 N.E.2d 1240, 1245 (Ind. Ct. App. 2002) (in appeal of a preliminary injunction, the court found that an employer did not terminate its employee prior to the expiration of the employee's contract, even though the employee was told not to work, because the employer paid the employee's salary and benefits through the term of the contract).

As Fernandez Racing correctly notes in its brief, "[i]f there is an employment contract for a definite term, and the employer has not specifically reserved the right to terminate the contract before the conclusion of the term, the employer generally may not terminate the employment relationship except for cause or by mutual agreement." Bee Window, Inc. v. Turman, 716 N.E.2d 498, 500-01 (Ind. Ct. App. 1999). Here, the parties entered into a contract for a definite term that provided "for cause" termination under very specific circumstances, none of which applies to the circumstances surrounding August 4, 2003. For example, there is no allegation that Watson committed a felony or misdemeanor involving dishonesty. [Compl., Ex. 1, ¶ 5(A)]. Likewise, as of August 4, 2003, Fernandez Racing does not contend Watson had committed a material breach of the contract. [Compl., Ex. 1, ¶ 5(B)]. Accordingly, absent breach, the only way for Fernandez Racing to terminate the contract as of August 4, 2003 was by mutual agreement of the parties. Despite Watson's protestations to the contrary, Fernandez Racing did not terminate his employment on August 4, 2003. Rather, it is undisputed that Fernandez Racing expressly acknowledged the contract and its desire to work out a mutual agreement to terminate the contract. Unfortunately for all involved, those negotiations proved fruitless.<sup>3</sup>

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<sup>3</sup>In support of his argument Fernandez Racing terminated his contract, Watson relies heavily on Ten Cate Enbi, Inc. v. Metz, 802 N.E.2d 977 (Ind. Ct. App. 2004). However, Metz is

Watson's next argument assumes that the Court would find that Fernandez Racing terminated him on August 4, 2003. According to Watson, "[t]he secondary issue is whether Watson was required to design pit equipment and lose his ability to spend time with his family in England in order to mitigate his damages." [Docket No. 41, p. 5]. Although not couched in so many terms, this argument is really whether Fernandez Racing breached the contract by requesting Watson to perform services not contemplated by the plain and ordinary text of the contract. The Court finds that it did not.

As noted above, the agreement required Watson to provide all engineering services "required or necessary in connection with any testing, practice, developmental programs or racing of Champ and/or IRL Cars." [Compl., Ex. 1, ¶ 1(A)] (emphasis added). Moreover, the contract required Watson to "fully cooperate with all employees of Team in attempting to maximize the race track performance of Champ and/or IRL Cars." [Id.] (emphasis added). Finally, the contract required that Watson render his engineering services "at the headquarters of Team in Indianapolis, IN and be present at and attend, as requested by Team . . . design sessions the purpose of which is to maximize the performance of the Champ Cars of Team or components thereof." [Compl., Ex. 1, ¶ 1(B)]. Designing pit equipment is presumably not as glamorous as performing engineering tasks during a race. However, such services fall within the plain language of the contract. Common sense dictates that properly designed pit equipment will enhance the performance and efficiency of the crew during pit stops. Accordingly, Fernandez Racing did not breach the contract by requesting that Watson design pit equipment for the IRL

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distinguishable and inapplicable. The disputed contract in Metz was not for a definite term and was instead terminable at will. More important, unlike Metz, the undisputed facts in the instant matter do not establish that Fernandez Racing terminated the contract on August 4, 2003.

program.

Instead, Watson breached the agreement by failing to return to work once negotiations to mutually terminate the contract failed.<sup>4</sup> Watson argues that he “was not required to mutually agree to be terminated.” [Docket No. 33, p. 15]. Watson is correct on this point. However, once efforts failed to reach a mutual agreement regarding the termination of the contract, and Fernandez Racing requested his return to work, Watson was required to abide by the plain language of the contract. As explained above, Watson’s engineering services under the contract included such tasks as designing pit equipment. Once Watson failed to perform services required under the contract, Fernandez Racing followed the procedure outlined in the agreement for termination by providing Watson with written notice of his breach. When Watson failed to cure his breach, Fernandez Racing rightly terminated the contract effective October 3, 2003. In short, Watson’s claim for breach of contract must fail.

**B. Attorneys’ Fees.**

According to Paragraph 12 of the agreement:

Attorney Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney’s fee, which may be set by the Court in the same action or in a separate action brought forth for that purpose, in addition to any other relief to which the prevailing party may be entitled.

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<sup>4</sup>Fernandez Racing also argues that Watson breached the agreement when he provided services for Coyne Racing during the weekend of October 11-12, 2003, and that his perfidious actions provided a basis for Watson’s termination. [Docket No. 25, pp. 18-19]. The Court does not reach the same conclusion. According to the contract, Watson agreed that he would not provide engineering services, during the term of the contract, for any person or entity involved in cars racing in a series in which Fernandez Racing competes or a series that is competitive with a series in which Fernandez Racing is competes. [Compl., Ex. 1, ¶ 4(A)]. Fernandez Racing terminated Watson’s employment pursuant to contract provisions effective October 3, 2003. Accordingly, Watson’s services for Coyne Racing on October 11-12, 2003 fall outside the term of the contract.

[Compl., Ex. 1, ¶ 12]. Fernandez Racing, the prevailing party in this action, requested payment of its attorneys' fees and costs associated with this litigation pursuant to the contract. [Docket No. 24, p. 1]. Accordingly, the Court GRANTS Fernandez Racing's request for reasonable attorneys' fees. In the event that the parties are unable to resolve this issue on their own, Fernandez Racing shall file any affidavits or other support for an award of fees/costs within twenty days from the date of this entry. Any response shall be filed ten days thereafter, and any reply shall be filed seven days thereafter.

**V. Conclusion.**

Plaintiff's motion for partial summary judgment is DENIED. [Docket No. 32]. Defendant's motion for summary judgment is GRANTED. [Docket No. 24]. Defendant's motion to strike Plaintiff's claim for damages is DENIED as MOOT. [Docket No. 30]. Judgment shall be entered accordingly.

SO ORDERED. Dated: 01/12/2005

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Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

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